

REMARKS

Acknowledgement of Telephonic Interview on June 14, 2005.

Applicants acknowledge, with appreciation, the Examiner's courtesy in conducting a telephonic interview on June 14, 2005. During the telephonic interview, possible claim amendments were discussed for the purpose of overcoming the imposed rejection. In this respect Examiner Tran suggested that claim 17 be amended to recite that the same conditions are employed for etching the upper and lower insulative films, or that specific conditions which are the same be identified. During the telephonic interview, Examiner Tran acknowledged that Gocho employ different powers for etching the upper and lower insulator films.

The Present Amendment.

The present Amendment is submitted in reliance upon the spirit of cooperativeness demonstrated by Examiner Tran during the June 14, 2005 telephonic interview. Specifically, independent claim 17 has been amended to recite that the upper and lower insulator films are etched under substantially the same conditions, including power, consistent with Examiner Tran's suggestion. Clearly, the present Amendment finds adequate descriptive support throughout the originally filed disclosure as, for example, page 16 of the written description, line 14 through page 18 thereof, line 1. Further, based upon the apparent understanding during the June 14, 2005 telephonic interview, the present Amendment does not generate any new issue. Certainly, the present Amendment places the Application in better condition for appeal. Applicants, therefore, solicit entry of the present Amendment and favorable consideration pursuant to the provisions of 37 C.F.R. § 1.116.

Claims 8 through 15 and 17 through 19 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Gocho.

In the statement of the rejection the Examiner acknowledged Applicants' arguments with respect to paragraphs [0017] and [0019] of Gocho advanced in the March 17, 2005 response. However, the Examiner asserted that similar conditions of gas and pressure were employed in Gocho's method for etching the upper and lower insulator films. This rejection is traversed.

As argued throughout the prosecution of this application, the factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). There is a significant difference between the claimed method and Gocho's method that scotches the factual determination that Gocho discloses a method identically corresponding to that claimed.

Specifically, independent claim 17 is directed to a method of fabricating a semiconductor device, which method comprises a sequence of manipulative steps including etching an upper insulator film and a lower insulator film of different materials under "... the same conditions, including power...." No such method is disclosed by Gocho. Indeed, as apparently recognized by the Examiner during the telephonic interview of June 14, 2005, Gocho neither discloses nor suggests the concept of etching the upper insulator film 17 and lower insulator film 16 (Fig. 1) under the same conditions. In fact, the upper and lower insulator films in the method of Gocho are etched under different conditions. Certainly, the upper insulator lower insulator films in Gocho's method are not etched under the same power, as in the claimed invention.

The above argued difference in manipulative steps between the claimed method and Gocho's method, as apparently appreciated by the Examiner during the telephonic interview of June 14, 2005, undermines the factual determination that Gocho discloses a method identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 8 through 15 and 17 through 19 under 35 U.S.C. § 102 for lack of novelty as evidenced by Gocho is not factually viable and, hence, solicit withdrawal thereof.

Claim 16 was rejected under 35 U.S.C. § 103 for obviousness predicated upon Gocho.

This rejection is traversed. Specifically, claim 16 depends from independent claim 1. Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 17 under 35 U.S.C. § 102 for lack of novelty as evidenced by Gocho. The Examiner's additional comments do not cure the previously argued deficiencies of Gocho.

Applicants, therefore, submit that the imposed rejection of claim 16 under 35 U.S.C. § 103 for obviousness predicated upon Gocho is not factually or legally viable and, hence, solicit withdrawal thereof.


Based upon the foregoing it should be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

Application No.: 10/624,540

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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